No. _____,

In the
Supreme Court of the United States

IN RE DEREK WELLS

Petitioner,

v.

THE SECRETARYOF THE TREASURY

Respondent.

On Petition For A Writ Of Prohibition Or In The Alternative Mandamus, In The Form Of An Order Nisi

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PETITION FOR A WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS, IN THE FORM OF AN ORDER NISI

QUESTIONS FOR REVIEW

Does the 13th Amendment restrict the ability of the government to impose what amounts to be a tax on an American citizen's labor?

Did the 16th Amendment modify the provisions of the 13th Amendment?

Does the definition of the word Income as used in the 16th amendment permit the government to tax the manual labor and 'sweat of the brow' of an American citizen?

Can the definition of words change over a period of time to make that which was unconstitutional morph into constitutionality?

Does the Respondent admit that wages paid in exchange for 'the sweat of the brow' are excluded under Fundamental Law from Income as former Secretaries of the Treasury promulgated?

Does the current application of the regulations promulgated by the Respondent invoke the warning by Chief Justice White in Brushaber and that a Fifth Amendment "taking" is occurring?

Can this court issue the requested writ or alternative remedy?

PARTIES

1. Petitioner Derek Wells is a citizen and resident of the United States of America.
2. Respondent Secretary of the Treasury is a public Minister designated by law, Congress and this court to interpret, promulgate and publish rules and regulations emanating from passage of the 16th Amendment and the Tariff Act of 1913 and the Social Security Act of 1935.

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JURISDICTION AND VENUE

This is a case of First Impression. This court has original jurisdiction over this action because it is an action between a citizen of the United States and a public Minister. Article 3, section 2 of the United States Constitution.

Public Minister. Article II, sec. 2 of the United States Constitution commands the President of the United States to nominate, and by and with the advice and consent of the Senate, they shall appoint principal Officers, Ambassadors, and other public Ministers and consuls…

Public Ministers are vested with the administration of one of the principal branches of the government. Public Ministers are authorized to represent their countries abroad, (plenipotentiary powers) such as ambassadors and envoys. The Secretary of the Treasury is a public Minister.

Plaintiff would also argue that this court has original and exclusive jurisdiction under the First Amendment of the Constitution. Referred to as the Bill of Rights Article I states that Congress shall make no law….. abridging…. the right of the people….. to petition the government for a redress of grievance. The Secretary of the Treasury is a federal Constitution Public Minister within the federal structure of government. Congress is made up of two legislative bodies, the House of Representatives and the Senate. The federal Government consists of three branches, the Legislative and the Executive and the Supreme Court. The First Amendment doesn't merely give the people the right to petition elected representatives off the two houses of the legislature. Had that been the case the word "congress" would

have been used instead of "government", and thereby being that Congress would make no law abridging the right to petition Congress. The wording suggests otherwise and demonstrates an acknowledgment that the people have a choice as to where to lay their petition. I choose to lay my 'petition' with this court. I ask this Court to redress my grievance.

This Court, and only this Court, has the authority to issue the requested relief. No adequate alternate remedy or forum exists. Plaintiff recognizes that this Court's original jurisdiction precedents would justify the Court hearing this matter under the Court's discretion. In determining whether to hear this case I ask the Court to consider whether the plaintiff even has another *adequate* forum in which to settle his claim as this case presents constitutional questions of immense national consequence. *Marbury v. Madison*, 5 U.S. 137 (1803) held that Congress cannot expand or restrict the Supreme Courts original jurisdiction. This is an appropriate case that warrants this Court's original jurisdiction obligatory review.

This action does not raise a non-justiciable political question. The "political questions doctrine" does not apply here. Nor do the doctrines of various congressional anti-injunction acts. As established in *Marbury v. Madison*, (supra) Congress has no authority to prevent judicial review of constitutional rights.

CONSTITUTIONAL PROVISIONS

1. The Constitution of the United States is the supreme law of the land. The Constitution is superior

to all Acts of Congress, Federal law and all Rules and Regulations promulgated by any federal agency. Article 1, section 8 gave Congress the power to lay and collect Taxes, Duties, Imposts and Excises. Duties, Imposts and Excises under this section shall be uniform throughout the United States. Article 1, section 2 declared that direct Taxes shall be apportioned among the several states.

2. The 16th Amendment modified the rules under which Congress could lay and collect taxes on Incomes. It reads:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

In proposing this Amendment and securing its ratification the Government clearly intended the tax "incomes" with a modification of the implementing rules prescribed in Article I, section 2.

3. The 13th Amendment to the United States Constitution reads;

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.
>
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

4. The Tariff Act of 1913. Section II

The Tariff act of 1913, section II imposed a tax on *Incomes* and incomes alone. Many sections of the act

were litigated and the Supreme Court in *Brushaber v. Union Pacific Railroad Co.* (240 U.S. 1). Brushaber challenged many of the provisions of the new tariff act however his challenges were not exhaustive of potential constitutional violations.

5. The Social Security Act of 1935, Title VIII violates the Thirteenth Amendment.

6. The Fifth Amendment to the Constitution in relevant part reads:

> …..nor shall private property be taken for public use without just compensation.

NATURE OF THE ACTION

The Constitution and its Amendments are the heartbeat of our Nation. No rights are more precious than the Blessings of Liberty proclaimed throughout the Constitution. That document and its amendments enumerates some of the rights of 'We the People' and grants certain powers to the Government. Many of those powers may be considered plenary. However when dealing with the citizenry plenary power is the power of tyrants, kings and dictators and has no place in our constitutional republic. It cannot be that when dealing with the rights of 'We the People', in whom sovereignty resides, that the government holds the plenary power.

Neither slavery nor involuntary servitude shall exist in these United States. Slavery is slavery, freedom is freedom. There are no degrees on these subjects that are acceptable to us, only absolutes. Lincoln

proclaimed that slaves were free and recommended "they labor faithfully for reasonable wages". Everyone understands the abhorrent nature of slavery but few understand the concept of servitude. There is much that is misunderstood concerning servitude and the time is ripe for an examination of the promise that involuntary servitude shall not exist. These words, used in the 13th Amendment of the United States Constitution, have a larger meaning than slavery; (*Bailey v. Alabama*, 219 US 219, 31 Supreme Court 145). Servitude in civil law is the subjection of one person to another. A *personal* servitude is the subjection of one person to another: if it consists in the right of property which a person exercises over another, it is slavery. If someone else or some other entity or government claims it has an inherent and superior right to my labor, or the fruits of my labor, I am in servitude. In our hearts we know that to tax the sweat of the brow is fundamentally wrong. So we must examine the 16th Amendment and its progeny, including the rules and regulations promulgated by the Secretary of the Treasury to determine compliance with the fundamental law of the 13th Amendment.

Petitioner has suffered from and continues to suffer from significant and unconstitutional irregularities through the actions and non-actions of the Respondent. The Secretary of the Treasury failed to adequately protect the Constitutional Rights of Derek Wells and other Working Class Americans when promulgating the rules and regulations governing the meaning of 'income' within the Sixteenth Amendment, the Tariff Act of 1913 and the Social Security Act of 1935.

These Constitutional violations continue today. The current Secretary of the Treasury, like their predecessors, is solely responsible for the mischief caused by their administration of the Internal Revenue Code and all of its progeny. Respondent can at any time promulgate rules and regulations to end this Constitutional malfeasance but has chosen not to.

It becomes increasingly easy to get caught up in our modern-day interpretations of the meaning of words. Certainly words that we bandy around in every day conversations do not necessarily mean what they meant a century or more ago. It is incumbent upon us to examine thoroughly the meaning of words when the 'script' was written. Particularly when that script has the full force and effect of law. It is true that courts and this Court have struggled with this enigmatic word 'income' to the extent that it has often been said that it is vague, obscure and ambiguous. So much so that the mere use of it in legislation could subject those laws, rules and regulations to the 'vagueness' doctrine. Whilst we cannot and should not attempt to determine every instance that constitutes income within the meaning of the 16th Amendment we can make a reasonable determination of what is **not** income in its constitutional sense. We must examine the rules and regulations promulgated by the Secretary of the Treasury to determine whether they are actually in compliance with the 16th Amendment itself. In particular we must examine the usage and meaning of words at the time these constitutional amendments were written and not in today's colloquial sense.

STATEMENT OF FACTS

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

So reads the 13th Amendment.

I'll repeat that; neither slavery nor involuntary servitude shall exist within these United States. There are no varying degrees, only absolutes. While the immediate concern was with African slavery, the amendment was not limited to that.

> It (the amendment) was a charter of universal civil freedom for all persons, of whatever race, color, or estate, under the flag. The words involuntary servitude have a larger meaning than slavery. The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render it impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude. (*Bailey v. Alabama*, 219 US 219, 1911).

Servitude is the subjection of one person to another person, or a person to an entity, or a person to his government. If it consists in the right of property which a person exercises over another, it is slavery. When another person, entity or government claims to have a superior and inherent right to your labor, or the fruits of your labor you are a slave.

> But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions. (Bailey *supra*).

As a result of the passage of the 16th Amendment Congress was finally able to achieve its goal of laying the tax on income regardless of the source. Oddly in the hundred years or more since the passage of the 1913 Tariff Act Congress has not once defined income. They have instead left it to the interpretation of the administrative bureaucracy and to the courts. The Secretary of the Treasury has from time to time published regulations and Treasury Decisions as to what is included in what is now the numerous subdivisions of income. For example we now have gross income, taxable income, passive income, earned income and unearned income to name but a few. However there have been occasions when Treasury has told us what is not included in income. Treasury Decision, Internal Revenue Vol. 26 No. 3640, Pg. 769 (1924)."Gross Income excludes items of income specifically exempted by statute or fundamental law, free from tax."

By 1939 and the advent of the first compendium of tax laws known as the Internal Revenue Code, the Tariff Act of 1913 had been replaced by the Revenue

Act of 1938. The revenue act of 1938 continued to levy an income tax on net income. In 1939 the Secretary of the Treasury published 26 CFR (1939), Title 26, Internal Revenue, Part II. Subtitle B, Computation of Net Income, section 3.21-1 Meaning of net income. It states in part:

> 3.21-1 Meaning of net income. The tax imposed by title I of the act is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.

Clearly then it is possible to derive income, or experience a gain from a source that cannot be taxed under fundamental law.

Income is profit or gain. Income had a very specific meaning in 1913 hence there was no need to define the meaning with specificity. Again and again throughout judicial review it is painfully obvious that in order to have income within the meaning of the 16th Amendment there had to be profit and gain. Of course when defining the word income today in everyday parlance it conjures up a completely different concept. Like many Constitutional provisions, statutes, rules and regulations we must be careful not change the original intent by adopting ever-changing theories and interpretations for to do so brings into question a myriad of decisions once thought to be stare decisis. *Merchants' Loan & Trust v. Smietkana,* 255 U.S. 509 (1921),

> There can be no doubt that the word (income) must be given the same meaning and content in the Income Tax Act of 1916 and 1917 that it had

> in the Act of 1913. When to this we add that in Eisner v. Macomber, supra, a case arising under the same Income Tax Act of 1916 which is here involved, the definition of "income" which was applied was adopted from Stratton's Independence v. Howbert, supra, arising under the Corporation Excise Tax Act of 1909, with the addition that it should include "profit gained through the sale or conversion of capital assets". There would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress, that was given to it in the Corporation Excise Tax Act, and what that meaning is, has now become definitely settled by decisions of the Court.

And in *Oliver v. Halstead*, 196 VA 992; 86 S.E. Rep. 2D 858, also *U.S. v. Ballard*, 575 F. 2D 400 (1976):

> There is a clear distinction between 'profit' and 'wages' or compensation for labor. Compensation for labor cannot be regarded as profit within the meaning of the law…The word 'profit' is a different thing altogether from mere compensation for labor. *So. Pacific v. Lowe*, 238 F. 847, … 'Income', as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'income' and 'profits' is to limit the meaning of the word 'income'.

Helvering v. Edison Bros. Stores, 133 F. 2D 575;

> The Treasury Department cannot, by interpretive regulations, make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress,

> without apportionment, tax as income that which is not income within the meaning of the Sixteenth Amendment.

And

> There is no such thing in the theory of our national government as unlimited power of taxation in congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The right to taxation is subject to these limitations. *Citizens' Savings and Loan Ass'n v. Topeka*, 20 Wall. 655, and Parkersburg v. Brown, 106 U.S. 487, 1 Sup. Ct. 442.

Pres. Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863. As part of that proclamation he recommended that the freed slaves "labor faithfully for reasonable wages". The Bouvier's Law dictionary 1856 edition defines "wages" as a compensation given to a hired person for his or her services. Black's Law dictionary Centennial Edition (1891 to 1991) affirms Bouvier's definition and elaborates extensively as to the different forms of remuneration. Included in those different forms of wages are tips and salaries. Also included in the Black's Law definitions are two court cases, *Ernst v. Industrial Commission*, 246 Wis. 205, 16 N.W. 2d 867 and *Ware v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 24 Cal App. 3d 35, 100 Cal. RCal. Rptr. 791, 797. There is therefore an extensive and complete understanding as to what constitutes wages from

1863 until 1991, encompassing a timeframe from the Emancipation Proclamation through and including the Sixteenth Amendment, the Tariff Act of 1913, the Revenue Act of 1938, the Internal Revenue Code of 1954 and the Internal Revenue Code of 1986. The words wages and income when used in taxing statutes are two separate and distinct nouns. If Congress had intended to tax wages in the Tariff Act of 1913 they would have said so. Had Congress intended to tax wages the Secretary of the Treasury would have said so. Congress taxes income from whatever source derived. Income (profit and gain) may be derived from wages. Wages (compensation for services) may be paid as an element of income (profit or gain). It is a whole different reality to merely state "wages are income". Fortunately we have historical guidelines as to what does and does not constitute gross or net income and wages do not constitute gross or net income. *Lucas v. Earl*, 281 U.S. 111.

> It is to be noted that by the language of the Act it is not 'salaries, wages or compensation for personal service' that are to be included in gross income. That which is to be included is 'gains, profits and income derived' from salaries. Wages or compensation for personal service are not to be taxed as an entirety unless in their entirety they are gains, profits and income.

See also Treasury Decision, Internal Revenue VOL. 26 No. 3640, Pg. 769 (1924) and: 26 CFR (1939), Title 26, Internal Revenue, Part II. Subtitle B, Computation of Net Income, section 3.21-1, Meaning of net income. Quite simply put it is unconstitutional and violation of Fundamental Law to tax wages received as compensation for the "sweat of my brow".

ARGUMENT

> Now who is the Forgotten Man? He is the simple, honest laborer, ready to earn his living by productive work. We pass him by because he is independent, self-supporting, and asks no favors. He does not appeal to the emotions or excite the sentiments. He only wants to make a contract and fulfill it, with respect on both sides and favor on neither side. He must get his living out of the capital of the country….. It is plain enough that the Forgotten Man and the Forgotten Woman are the very life and substance of society….What the Forgotten Man needs, therefore, is that we come to a clear understanding of liberty and to a more complete realization of it. Every step which we win in liberty will set the Forgotten Man free from some of his burdens and allow him to use his powers for himself and for the Commonwealth. (William Graham Sumner).

The 16th Amendment and the Tariff Act of 1913 were put into place to tax wealth. Wealth that flows to a taxpayer through the utilization of their capital, the utilization of their property and the utilization of the Forgotten Man and Woman's (the Working Class) muscle and brains. It is abundantly clear that the intent of the 1913 Tariff Act was to tax profit and gain realized through different aspects of commercial enterprise. This new tax burden was to be borne by, let us call them, the "privileged" class. That is that certain class of persons that made financial gains through the participation in commercial enterprises and occupations receiving government sanctions, i.e.

corporations, partnerships, government employment etc. Nowhere was it ever contemplated to tax the sweat of the working man's brow. Imagine a mere 50 years after Lincoln had freed the slaves the federal government would have the audacity to now inform those freed slaves that your federal government, has the inherent right to exact from you a percentage of that reasonable wage.

It matters not that there was a progressive nature to the tax and that the initial percentage of tax due was miniscule or that there was a threshold of income allowed before the tax was due. The principle remains the same. That principle being that if Congress so wish to it could not only remove all thresholds (married, single, filing jointly, filing separately etc.) but also increase the percentage of taxation to any number it wished. Would that then make me a percentile slaves. Whilst that might not be politically expedient the principle remains the same inasmuch as if Congress wished to it could "take" all of the fruits of my labor. It would of course, in order to keep me productive, have to institute a social program to put a roof over my head, feed and clothe me. Imagine also that a mere 25 years on from the 1913 Tariff Act the government then labels the work to earn that reasonable wage the act of a servant for his master. Doesn't seem possible does it? Did we then complete the cycle? Have I become the property of the plantation of Washington DC? I think that is not the case although this court may choose to say otherwise. If that be so I will, together with the Working Class and the Forgotten Man know where we stand. Our purpose only that of the indentured servant or slave to produce and serve the other

classes that no longer labor. Those that propound that Wages ARE Income spew nonsense.

In 1913 the threshold basis for the imposition of the income tax was $3000. According to the Bureau of Labor Statistics the average annual wages for example of a bricklayer was less than $750. Many other manual labor occupations can be researched but it is true to say that none of the "working class" jobs paid anywhere near the income tax threshold. Consequently no challenges were ever instigated as to the potential violations of the Constitution by Congress's attempt to tax manual labor. Certainly Brushaber never raised any such challenge.

Consequently Brushaber is of little use to us in this inquiry. That is apart from Chief Justice White's opinion on the relevance of the Fifth Amendment in that case. Chief Justice White expounded that it was well settled that the Fifth Amendment due process clause was not a limitation on the taxing power conferred upon Congress by the Constitution. However he went on to say that the Fifth Amendment due process doctrine would have no application;

> in a case where although the there was a seemingly exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, the taking of the same in violation of the Fifth Amendment; or what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to him inevitably lead to

the same conclusion. (Brushaber *supra*, page 244).

That is to say that the taxing authority of Congress can run afoul of the Fifth Amendment if it violates the " ..nor shall private property be taken for public use without just compensation" clause.

Through the years each new Tariff Act adjusted the rate of exemptions for single and married couples. By example the revenue act of 1926 gave an exemption of $1500 for a single person and $3500 for a married couple. The Revenue Act of 1934 reduced the exemption for a single filer to $1000 and $2500 for a married couple. These rates had no effect on the common laboring professions. They simply did not earn enough to be made liable for the income tax thus avoiding the controversy that their wages could in any way be considered profit and gain (income). In June 1938 Congress passed the Fair Labor Standards Act which included a provision for a federal minimum wage. Congress mandated that for the first year of the act the minimum wage would be $.25 per hour, for the next six years $.30 per hour and after year seven $.40 per hour. Consequently in 1940 a laborer working a minimum wage job would have brought in an average of $624 per annum to the recipient. The Tax Act of 1940 set the exemption for a single filer at $800.

According to public law 117 – 154 (06/23/2022) the US tax code is 6871 pages long. When you include the Federal Tax Regulations and the official Tax Guidance the number of pages increases to approximately 75,000. This would take the average reader 14 weeks to read. The Tax Foundation Organization estimates that as of October 2015 there

were some 10 million words included in the Federal Internal Revenue Code and Federal Tax Regulations. The Secretary of the Treasury is responsible for every word. There should be little doubt then as to how we calculate profit and gain in order to comply with Congress's mandate to lay and collect taxes from whatever source derived. There is a very common theme that runs through these all these volumes and all these words and that is mathematics. Every single instance of income tax requires a calculation to be made between a "base point" of the value to the "end point" value in order for realization of income to occur.

Whether we are dividing the income into separate "pots" labeled gross income, net income, taxable income, earned income, passive income or unearned income the principle is the same. That is except when it comes to my wages. For example if the Baker buys 100 pounds of flour for $100 and converts that flour into 100 loaves of bread and sells them for $5 a loaf we can calculate his profit and gain. His endpoint value is $500, his starting point value was $100 and his profit was therefore $400. Fairly basic stuff. 10 million words later we are still dealing with the same basic math. Comparative values the difference of which determines income as defined by the 16th Amendment. How then can you ever reconcile not only from a Constitutional, Fundamental Law or basic human rights standpoint the direct classification of my wages as income. That is unless Congress considers me mere chattel, of no value, and worthless.

I am just a common man. I am endowed by my Creator with certain unalienable rights amongst

which are Life, Liberty and the pursuit of Happiness. In order to live I must provide food, shelter and clothing for myself and my family. In order to have liberty I must strive to be financially independent. In order to pursue happiness I must be able to acquire the basic needs of life. *Coppage v. Kansas*, 236 U.S. 1 at pg. 14;

> Included in the right of personal liberty and the right of private property, partaking in the nature of each, is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment by which labor and other services are exchanged for money and other forms of property.

and; *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746 at 756-757:

> among these inalienable rights, as proclaimed in the declaration of independence is the right of men to pursue their happiness, by which is meant, the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment… It has been well said that, the property which every man has is his own labor, as it is the original foundation of all of the property so it is the most sacred and inviolable…to hinder his employing…in what manner he thinks proper, without injury to his neighbor is a plain violation of the most sacred property. It is a manifest encroachment upon the just liberty of the workman and of those

> who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper.

It is from these fundamental rights that we derive the fundamental right to work and be paid. To tax that right is to convert it into a privilege. Money is nothing more than a medium of exchange. Work is a medium of exchange. Work for most of us is our only means of support. It's all we have. The value of my work can only be determined by me and then that value must be accepted by others who are willing to pay me. The resulting exchange of my labor for an agreed sum of money can never be a profit or gain. Simple math. A man asks me to bake 100 loaves of bread for him. We agree that I will do it for five dollars an hour. It takes me four hours and the man pays me $20. Where is my income, profit or gain? The endpoint of the transaction was $20. The beginning point of the transaction was the agreed value of my labor, $20. The resulting comparative value was zero. My net income under Fundamental Law is zero. But let me be clear. If you partake in commercial enterprise and realize income, profit and gain through privilege you are subject to the income tax. However for the Secretary of the Treasury to claim that Congress has an inherent right to tax the sweat of my brow and take the fruits of my labor in this manner is repugnant to the Constitution, the 13th Amendment and the taking clause of the Fifth Amendment.

When Congress delegated the responsibility of promulgating the rules and regulations for the administration of the Tax Code to the Secretary of

the Treasury there was no specific mandate within those many statutes as to strict adherence to the Constitution. However as a Public Minister their oath of office commands them to do so. (Title 5, Part III, sub. B, Chapter 33, Subchapter II, Sec. 3331). Had the Secretary of the Treasury correctly promulgated rules and regulations explaining to the American people that indeed the inclusion of wages under Fundamental Law was not to be included in a calculation of Net Income, or Taxable Income as it is now known, we would not be in the dilemma we are today. Although the term Net Income was replaced in the 1954 Internal Revenue Code with the term Taxable Income and moved from section 22 (a) to the new section 61 (a) Congress was quick to point out that there was no substantive change to the 1939 code. The Congressional committee reports were House Report number 1337, March 9, 1954 and Senate Report number 1622, 1954. Both reports state that although Gross Income has been redefined the word “income” is still used in "its constitutional sense". That the new term Adjusted Gross Income made no substantive change and that section 63, Taxable Income is derived generally from section 21, Net Income, or the 1939 code. Therefore the promulgation from the 1939 code section 21 that wages were excluded from Net Income under Fundamental Law had not changed. [26 CFR (1939), Title 26, Internal Revenue, Part II. Subtitle B, Computation of Net Income, section 3.21-1 Meaning of net income].

On August 14, 1935 Congress passed the Social Security Act. Title VIII of the Act, TAXES WITH RESPECT TO EMPLOYMENT, imposed an income tax on

employees, the working class. More specifically it imposed an income tax on the very first dollar earned as wages. And there you have it. With the stroke of a pen the government had now converted the status of the working man or woman, the children of the freed slaves, to that of an employee. You now labored for an employer. The legal definitions of employer/employee is that of master/servant. The government had now placed you in a privileged relationship and your work was now of the servant. *Simms v. Arehns*, 271 S.W. 720 (1925) Ordinary (unlicensed) occupations are not subject to the tax was established in this case. The court said,

> An income tax is neither a property tax or a tax on occupations of common right, but is an excise tax… The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, but it has not power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right.

Whilst challenges were made on behalf employers as to the constitutionality of this new Act, none were made on behalf of the working man. Congress's first attempt at imposing Social Security was in 1934. It was immediately challenged in May 1935. This Court held that the Act was unconstitutional (*Railroad Retirement Board v. Alton R. Co.*, 295 U.S. 330). In essence the court said that it was outside the scope of Congress to force the employers to provide for workers welfare under their power to regulate interstate trade and commerce. Just three months later Congress passed the current Social Security Act. It was again challenged as unconstitutional but

only the section dealing with the employer's contribution, Title VIII, section 804. This court in *Charles C. Steward Machine Co., v. Davis*, 301 U.S. 548, held only that the tax on the employer was valid. It expressed the view that because the tax was an excise tax and paid into the treasury, and therefore subject to appropriations like all other public money, Congress had the power to appropriate the money for welfare. In *Helvering v. Davis*, 301 U.S. 619, this court again touched on the fact that this tax was an excise tax and therefore within the constitutional power of Congress. This Court has never opined on the Constitutionality of Title VIII, section 801, the income tax on the "servant" employee.

We could argue day and night over millions of words in the tax code as to what this Social Security program is or is not, but one thing is abundantly clear, the substance of what is occurring here is that current day employees are paying the benefits of current day retirees. Whether the funds end up in the Treasury or some elusive Trust Fund the result is the same. It is the essence of servitude. One might argue that the intent of the Act in 1935 was for the program to be voluntary but nothing could be further from the truth. It is disingenuous to propound, even though it is statutorily permissible, that the working man can function today without submitting himself to the mandates of various Social Security Acts and availing himself of the number. The Social Security Act, Title VIII, section 801converted the right to work to the status of privileged employee. *Miranda v. Arizona*, 384 U.S. 436,491; "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Even more egregious is the constant reminder from our congressional representatives that their scheme is becoming insolvent and that there simply may not be any funds left for current day workers by the time they retire. You can dress this scheme up anyway you want, you can put is much lipstick on this pig as you care, but you can never hide the fact that this is nothing but a government Ponzi scheme abhorrent to the Constitution and our freedoms.

The time has come for this court to consider the doctrine of substance over form. As stated by Chief Justice Fuller (*Pollock v. Farmers' Loan & Trust Co. et al*, 127 U.S. 429 at 689)

> If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of the state. But constitutional provisions cannot be thus evaded. It is substance, and not form, which controls, as has indeed been established by repeated decisions of this court.

And again by Mr. Justice McReynolds (*Weiss v. Stearn*, 265 U.S. 242, page 254) "and when applying the provisions of the Sixteenth Amendment and income laws enacted thereunder we must regard matters of substance and not mere form". This Court must decide on the substance here. *Yakus v. U.S.* 414, 468 (1944); "But whenever the judicial power is called into play, it is responsible directly to the fundamental law and no other authority can

intervene to force or authorize the judicial body to disregard it."

Although Derek Wells comes before you as the 'belligerent claimant in person' there is sufficient evidence to suggest that this petition should be given class action status. This court has repeatedly held that "a class representative must be part of the class and possessed the same interests and suffer the same injuries as the class members" (*Califano v. Yamasaki*, 442 U.S. 682, 700–01, 1979; *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 403, 1977). See generally Fed. R. Civ. P. 23. Such is the case here.

The tax on employers that derive income from the payment of wages is constitutional. The tax on employers to contribute to the Treasury for the appropriation of funds for Social Security is constitutional. But that's a far cry from the rape and plunder of the resources and dignity of the working class. For too long those who have acted unconstitutionally have hidden behind the shield of the Administrative State. Consequently the moral perversions of the Income Tax and Social Security when applied to Derek Wells and the Working Class have become established through ignorance, deceit and fear. *U.S. v. Minker*, 350 U.S. 179, 187; "Because of what appears to be lawful command on the surface, many citizens, because of their respect for what only appears to be a law, are cunningly coerced into waiving their rights, due to ignorance." What is wrong is wrong and a wrong that has been institutionalized is nonetheless still wrong.

Turning now to the issue as to whether or not the court is being asked to resolve a "political question"

it would seem that the six factors identified by this court in the 1962 case *Baker v. Carr* (396 U.S. 186) bear no relevance. Federal courts deal with political issues, in the sense of controversial and government related issues, all the time. Whilst many of the questions asked here may stir the political juices, when a specific duty is assigned by law to the Secretary of the Treasury, and individual rights depend on the performance of that duty, then injured individuals have a right to resort to the courts. (Marbury, *supra*)

In the recent decision in *Moore v. United States*, 602 U.S. ___(2024), this Court discussed the consequences of declaring longstanding taxes invalid. The goal of this plaintiff is not to "deprive the U.S. Government and the American people of trillions in lost tax revenue" or "require Congress to either drastically cut critical national programs or significantly increase [other] taxes." at pg. 21. However, in quoting Justice Thomas (Moore *supra*)

> I agree. But, if Congress invites calamity by building the tax base on constitutional quicksand, "[t]he judicial Power" afforded to this Court does not include the power to fashion an emergency escape.

The proposed writ is within the power afforded this Courts and does at least in some respects fashion an emergency escape.

In *Gould v. Gould*, 245 U.S. 151, this Court stated;

> In the interpretation of statutes levying taxes it is the established rule not to expand their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In the case of doubt they are construed most strongly against the government, and in favor of the citizen.

I turn now to the question as to whether or not this writ in the form of an order nisi is appropriate for this court to issue. The appropriateness of the writ speaks for itself inasmuch as it allows for the curing of the constitutional violation without causing a fiscal crisis. A suspended issuance of the writ and a provisional order *nisi* does indeed have precedent in this Court. In *United States v. Peters*, 3 U.S. Dall, 121, (1795) which was an application for prohibition to the admiralty, this Court suspended its decision to give the libellant an opportunity to dismiss his libel. Similarly this Court could afford the respondent the same courtesy. *Arguendo* the Secretary of the Treasury, in consultation with Congress would have time to fashion any number of forms of constitutional taxation to more than adequately replace any lost revenue. Amongst those many options would be the path that many states employ as to a consumption tax in the form of a sales tax. Conversely and further to the argument Congress could also reduce spending and tighten the purse strings. Plaintiff thus demonstrates that potential fiscal calamity should bear no reasoning in the instant case.

Respondent has been given sole authority by Congress to implement and indeed change any and

all rules and regulations herein deemed to be constitutionally flawed. Petitioner has conclusively demonstrated the errors in Respondents understanding of 'fundamental law', their errors in understanding the meaning of income as used in the Sixteenth Amendment and their failure to faithfully execute their oath of office. It is time to end the involuntary servitude and make labor free once more.

PRAYER

Wherefore Petitioner, Derek Wells asks this Court to issue a Writ of Prohibition in the form of an Order *Nisi* with an appropriate length of time for the Secretary of the Treasury to correct the Constitutional errors or in the alternative Mandamus and such other relief as the Court deems proper.

Respectfully submitted.

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